

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL WILLIAM JENSEN,

Plaintiff,

vs.

M. E. KNOWLES, et al.,

Defendants.

Case No. 2:02-cv-02373 JKS P

ORDER

On July 30, 2008, the Court ordered the Parties to confer and submit a joint status report and discovery plan on or before August 29, 2008. Docket No. 87. Plaintiff requests an additional 90 days to meet these requirements as he is currently being housed in administrative segregation. Docket No. 90. The Defendants oppose the extension arguing they are prejudiced by further delay. Docket No. 91. Defendants have also filed a status report and a motion requesting partial relief from the Court's Order of July 30, 2008. Docket Nos. 92 (Status report); 93 (Mot. for relief).

Defendants' status report indicates they intend to file a motion to dismiss under the unenumerated portion of Federal Rule of Civil Procedure 12(b) on the grounds of failure to exhaust administrative remedies. Docket No. 92 at 2. Defendants also indicate they may file a notice of related cases consistent with Local Rule 83-123. *Id.* Discovery would be appropriate in Defendants' view only after a motion to dismiss has been heard and ruled upon. *Id.* at 3. The status report at Docket No. 92 is accepted.

Defendants have asked the Court to relieve them from the obligation to submit a discovery plan, on the grounds that: (1) such plan is not required by Federal Rule of Civil Procedure 26(f) in a case where one of the parties is incarcerated; and (2) communication with the Plaintiff is currently very difficult because he is being housed in administrative segregation. Given that the conference of

the Parties is not required in this case and the current difficulty in communicating with Plaintiff, the motion at **Docket No. 93** is **GRANTED**. The Parties are relieved of the requirement to submit a discovery plan.

Plaintiff has asked for a 90-day extension of time to file his status report and discovery plan. Docket No. 90. Defendants oppose the extension. Docket No. 91. As the Court has gleaned the status of the case from the recent filings and elected to relieve the Parties of the burden of submitting a discovery plan, Plaintiff's motion for an extension is now moot. Accordingly, Plaintiff's motion at **Docket No. 90** is **DENIED** as moot. Mr. Jensen will not be required to submit a status report at this time or a discovery plan.

As Defendants noted in their opposition to Plaintiff's motion, this case has been grinding its way through the system for six years. It is time to move this case along. Defendants have indicated they anticipate filing a motion to dismiss. The Court agrees with Defendants that any motion to dismiss should be resolved prior to commencing discovery. Accordingly, if Defendants want to file a motion to dismiss before commencement of discovery they must do so on or before **September 30, 2008**. If Defendants elect to file a motion to dismiss, Plaintiff shall have 60 days from the date of service to file a Response. If Plaintiff files a Response, Defendants shall have 30 days from the date of service to file a Reply.

If Defendants have not filed a motion to dismiss by September 30, 2008, the Court will enter an order setting the schedule for discovery and dispositive motions.

IT IS SO ORDERED.

Dated this the 29th day of August 2008.

/s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge

ORDER